

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER

☐

DATE

August 25, 2021

MOTOR CARRIER MATTER

☐

DOCKET NO.

2020-263-E

UTILITIES MATTER

☒

ORDER NO.

SUBJECT:

[DOCKET NO. 2020-263-E](#) - Cherokee County Cogeneration Partners, LLC,
Complainant/Petitioner v. Duke Energy Progress, LLC and Duke Energy Carolinas, LLC,
Defendant/Respondent - Staff Presents for Commission Consideration Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Strike.

COMMISSION ACTION:

I move the Commission make the following rulings in Docket Number 2020-263-E, Cherokee County Cogeneration Partners, LLC, Complainant/Petitioner v. Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Defendant/Respondents:

1. I move that Cherokee established a legally enforceable obligation or LEO with Duke Energy Carolinas on September 17, 2018, to sell its power at Duke Energy Carolinas' avoided cost rate approved and determined by the Commission which existed on the date of the obligation.
2. That the Commission find Cherokee is entitled to assert its rights to a LEO.
3. That when Cherokee as the QF establishes a LEO, FERC's regulations allow the QF a further choice to be paid either (1) the purchasing electric utility's avoided cost calculated at the time of delivery, or (2) the purchasing electric utility's avoided cost calculated at the time the LEO is incurred.
4. That DEC has told the Commission the parties are in agreement "that a 10-year dispatchable tolling agreement structure is appropriate based upon current regulatory circumstances." DEC's representation is undisputed by Cherokee. Therefore, in accepting this representation by DEC, those matters are resolved and there is no longer any need for Commission decision related to the term or type of agreement. I would note that the utilization of a dispatchable tolling agreement is logical in this instance for many reasons including, but not limited to, the fact that: Cherokee is not a solar or wind generator QF; Cherokee already exists and is in operation; and Cherokee currently delivers power to DEC on a dispatchable basis.
5. Pursuant to Cherokee's LEO, Duke Energy Carolinas would be subject to Cherokee's choice to be paid either DEC's avoided cost calculated at the time of delivery or DEC's avoided cost calculated at the time the LEO is incurred.
6. The Commission further finds that no matter which date is selected by the QF (i.e., date of delivery or date of obligation), the avoided cost methodology must be one that is determined and approved by the Commission which either existed on September 17, 2018, or which exists at the time of delivery. The parties must use the Commission approved and adopted methodologies for calculating capacity and energy avoided cost

rates existing at that time.

7. As an alternative option, the Commission also finds that PURPA and Commission rules allow the parties to negotiate an agreement if Cherokee chooses not to continue to assert its rights to a LEO established on September 17, 2018.
8. Within seven (7) business days from the service of the Commission's Order in this docket, Cherokee shall notify DEC in writing, and by filing in the DMS, whether Cherokee is choosing to assert the LEO established on September 17, 2018 and state which date methodology is selected (i.e., existing on September 17, 2018 when the LEO was established, or on January 1, 2021 at the time of delivery following its 2012 PPA).
9. Based upon Cherokee's decision and the parties' agreed upon resulting terms for a successor PPA, Cherokee and DEC are instructed to execute any successor PPA between them (if any) **no later than**: a. fourteen (14) business days after Cherokee submits and files its avoided cost rate selection, or b. twenty-one (21) business days from the date of service of the Commission's Order.
10. DEC shall file the successor PPA with the Commission and provide a copy to the Office of Regulatory Staff in accordance with existing rules and regulations of the Commission.
11. A further proceeding is required for the Commission to determine any overage or underage that may have resulted from extensions of the 2012 contract terms between the parties since January 1st, 2021, and we retain jurisdiction of this docket for future proceedings and determinations regarding a petition to be filed by DEC for an accounting and true up.
12. We further find, regardless of which option Cherokee chooses, DEC is instructed to petition and request an accounting and any other remedy in this Docket related to an alleged discrepancy between the avoided cost rates paid by DEC to Cherokee on or after January 1, 2021, and during the extension of the 2012 PPA, no later than thirty (30) days from the entry of the successor PPA with Cherokee, or within forty-five (45) days from the service of this Order, whichever occurs first.
13. Finally, I move that the Commission carry over the Motion to Strike filed by Duke Energy Carolinas LLC and Duke Energy Progress LLC in this docket. So moved.

PRESIDING: J. Williams

SESSION: Regular

TIME: 11:00 a.m.

	MOTION	YES	NO	OTHER	
BELSER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Present in Hearing Room
CASTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Present in Hearing Room
ERVIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Voting via WebEx
POWERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Voting via WebEx
THOMAS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Present in Hearing Room
C. WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Present in Hearing Room
J. WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Present in Hearing Room

(SEAL)

RECORDED BY: J. Schmieding



